

REMARKS

The above Amendments and these Remarks are in reply to the final Office Action mailed 23 February 2007. No fee is due for the addition of any new claims. A request for a three-month extension of time is being electronically submitted herewith.

Claims 1-5, 8-11, 139 and 140 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected all pending claims. The present Response makes no changes to the claims. Reconsideration of the rejections is requested.

I. REJECTION OF CLAIMS 1, 2, 4, 5, 8-11, 139 AND 140 UNDER 35 U.S.C. §103(a)

The Examiner rejected claims 1, 2, 4, 5, 8-11, 139 and 140 under 35 U.S.C. §103(a) as being unpatentable over Colon in view of Briegs U.S. Patent No. 7,054,823. The Examiner also rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over a combination of Colon, Briegs and Cimino.

Briegs, however, is not prior art, since its filing date did not precede the "date of the invention" by the inventors of the subject patent application. 35 U.S.C. §102(e).

Submitted herewith is a DECLARATION OF INVENTOR MICHAEL G. KAHN UNDER 37 C.F.R. §1.131(b), providing documentary evidence that the invention was conceived prior to September 10, 1999 (the filing date of the provisional application to which the Briegs patent claims priority), and that diligence toward reduction to practice existed from a date prior to September 10, 1999, until after Applicants' constructive reduction to practice date of May 31, 2000 (Applicants' filing date).

Also submitted herewith is a DECLARATION OF INVENTOR MICHAEL MISCHKE-REEDS UNDER 37 C.F.R. §1.131(b) to the same effect.

It can be seen that all of the elements of independent claim 1 were present in the system as conceived by the inventors and in the system being reduced to practice.

Accordingly, Briegs is not prior art and cannot, either by itself or in combination with any other reference, preclude patentability of Applicants' independent claim 1.

Claims 2-5, 8-11, 139 and 140 all depend ultimately from independent claim 1, and therefore should be patentable for at least the same reasons as claim 1. These claims also add their own limitations which, it is submitted, render them patentable in their own right. Applicants do not believe it necessary to address the substantive positions taken by the Examiner in

rejecting any of the claims, but state for the record that they continue to disagree with the Examiner's positions and do not acquiesce in them.

Accordingly, claims 1, 2, 4, 5, 8-11, 139 and 140 are believed to be patentable.

II. WHY THIS RESPONSE AND ACCOMPANYING DECLARATIONS SHOULD BE ENTERED

This Response (including the accompanying Declarations) should be entered under 37 CFR 1.116(b)(3) because the response is necessary and could not have been presented earlier. The response is necessary because it overcomes the Examiner's only ground for rejecting the claims. It could not have been presented earlier because the outstanding final Office Action was the first time that the Examiner cited Briegs, the reference which the Declarations submitted herewith antedates. Applicants could not have known the necessity to submit the Declarations at any time prior to the outstanding final Office Action.

Regardless of entry of the Response, the Declarations submitted herewith should be admitted under 37 CFR 1.116(e) for the same reason: They could not have been presented earlier. The outstanding final Office Action was the first time that the Examiner cited Briegs. Applicants could not have known the necessity to submit the Declarations at any time prior to the outstanding final Office Action. The Declarations are being submitted on the same date as the filing of an appeal.

III. OTHER MATTERS AND CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The fee required for a three-month extension of time under 37 C.F.R. § 1.136 is being electronically submitted herewith, extending the time to respond up to and including August 23, 2007.

Also submitted herewith is a NOTICE OF APPEAL and the required fee.

Fee Authorization. The Commissioner is authorized to charge any additional fee(s) that may be required in connection with this Response, or to credit any overpayment, to Deposit Account No. 50-0869 (FSTK 1000-0).

Respectfully submitted,

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